

AUG 26 2005

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T.S. MCGREGOR, CLERK
U.S. BANKRUPTCY COURT
EASTERN DISTRICT OF WASHINGTON

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF WASHINGTON

In re:

THE CATHOLIC BISHOP OF SPOKANE)
a/k/a THE CATHOLIC DIOCESE OF)
SPOKANE, a Washington)
corporation sole,)

Debtor.)

COMMITTEE OF TORT LITIGANTS,)

Plaintiff,)

vs.)

THE CATHOLIC DIOCESE OF)
SPOKANE, et al.,)

Defendants.)

No. 04-08822-PCW11
Chapter 11

Adversary No. 05-80038-PCW

MEMORANDUM DECISION RE:
EVIDENTIARY OBJECTIONS

The Tort Litigants' Committee ("TLC"), as part of its pleadings in this constellation of motions for summary judgment, responses and motions to dismiss, filed the following pleadings:

1. Committee of Tort Litigants' Omnibus Evidentiary Objections to Affidavits Proffered by the Debtor in Opposition to the Committee's Motion for Summary Judgment and in Support of Debtor's Cross Motion for Summary Judgment (Docket No. 239); and
2. Committee of Tort Litigants' Omnibus Evidentiary Objections to Affidavits Proffered by the Parishes in Opposition to Committee's Motion for Partial Summary Judgment (Docket No. 240).

Attached to these objections were exhibits which, in great detail, set out the language objected to and the basis of the objection.

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1 The charts detailing the objections to the debtor's affidavits run
2 to 40 pages. The charts detailing the objections to the
3 Association of Parishes' affidavits run to 233 pages. The Court
4 recognizes that the parishes filed many more affidavits than the
5 debtor. Both the debtor and the parishes were compelled to file
6 extensive responses.

7 The Court decided at oral argument on the summary judgment
8 motions that a lengthy hearing to consider each and every objection
9 was not a good use of scarce assets. The parties were told that
10 they would be invited to submit additional materials regarding
11 specific objections to be defined at a later date. The Court did
12 that by a law clerk's letter to counsel. All of the affected
13 counsel accepted the invitation to supply additional written
14 argument. The Court has considered the applicable parts of the
15 original objections and responses as well as all of the
16 supplemental materials filed at the Court's request.

17 The goal of these objections was clearly to eliminate
18 opposing affidavits for technical rather than substantive reasons.
19 Objections to affidavits in a summary judgment motion have their
20 place. On occasion, a party will file affidavits which in whole or
21 in part should not be allowed to stand unchallenged for evidentiary
22 reasons. However, that is certainly not typical. A judge is
23 normally quite capable of determining what to consider and what to
24 discount. The fact that evidence is being allowed for the purpose
25 of this motion does not mean that it would be automatically
26 admitted in an evidentiary hearing. Further, since the Court is
27 dealing with a fraction of the objections, absolutely no
28 conclusions should be drawn as to how the objections not addressed

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1 might have been handled.

2 In dealing with the objections, the Court is ruling on those
3 specific objections upon which it asked for additional material and
4 portions of the affidavits for which there were no detailed
5 objections. As to entire affidavits that were not addressed, the
6 Court makes no ruling. Likewise, with regard to affidavits that
7 are addressed in this decision, to the extent that an objection to
8 a paragraph or exhibit is not discussed, then the Court makes no
9 ruling as to that material and the objection is neither granted nor
10 denied. The Court's purpose is judicial economy. It is only
11 ruling upon those objections which relate to statements upon which
12 the Court relied in reaching its decision on the summary judgment
13 and dismissal motions.

14 There is an objection based on relevance made in connection
15 with every single affidavit. The Court has considered this
16 objection as to each of the contested affidavits addressed below
17 and concluded that it is without merit. The objection based upon
18 relevance as to each of the following affidavits is denied.

19 **Affidavit of William S. Skylstad, Exhibit B, Docket No. 210**

20 The TLC, in its written submissions, withdraws its objection
21 and this exhibit will be admitted for the purpose of summary
22 judgment.

23 **Affidavit of Eleanor Finley, Docket No. 129**

24 The TLC objected to the entire affidavit on the basis of
25 relevance and specifically to paragraphs 7-9. The Court invited
26 additional submissions regarding paragraph 7. The specific
27 objection to paragraph 7 is lack of foundation and vague and
28 ambiguous as to the statement about regular contributions and lack

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1 of foundation and legal conclusion as to how the money was used.
2 Finally, any documents upon which the affiant relied were not
3 attached.

4 The objection is overruled as to paragraphs 1-7 and these
5 paragraphs are admitted for the purpose of summary judgment.
6 Paragraphs 8-9 have not been relied upon by the Court in making its
7 ruling on the motions for summary judgment or to dismiss and the
8 evidentiary objection to those paragraphs is not being ruled upon.
9 The allowed portions deal with affiant's history at the parish and
10 her intentions and motivations for giving. The statements do not
11 involve a legal conclusion. In general, the testimony is relevant
12 and the weight given to it will be dealt with in the memorandum
13 opinion. For the purpose of summary judgment, there is sufficient
14 foundation.

15 Affidavit of Father Daniel Barnett, Docket 130

16 The TLC objected to the entire affidavit on the basis of
17 relevance and specifically to paragraphs 4-22 and Exhibits A-M.
18 The Court invited additional submissions regarding paragraphs 6 and
19 11. The specific objection to paragraph 6 is lack of foundation
20 and legal conclusion as to the transfer of the property for \$135.00
21 and the source of the money. Further, the objection states that
22 the underlying documents have not been authenticated or established
23 as business records.

24 The objection is overruled as to Paragraphs 1-3, 6 and 11.
25 There is sufficient foundation to admit as business records. As to
26 paragraph 6, the Court has reviewed Exhibit C. It is apparent that
27 \$135.00 was expended for the lot. There is no apparent income
28 source other than parishioners and the moving party has not

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1 disputed the contention made throughout this proceeding that the
2 most significant source of funding for the debtor (and the other
3 members of the diocesan family) is free will contributions by
4 parishioners. Therefore, paragraph 6 and Exhibit C are admitted
5 for the purpose of summary judgment.

6 As to paragraph 11, there is sufficient foundation for a
7 parish priest to make these statements and authenticate Exhibit F.
8 Paragraph 11 and Exhibit F are admitted for the purpose of summary
9 judgment.

10 Paragraphs 4-5, 7-10, 12-22, Exhibits A-B, D-E and G-M have
11 not been relied upon by the Court in making its ruling on the
12 motions for summary judgment or to dismiss and the evidentiary
13 objection to those paragraphs and exhibits is not being ruled upon.

14 **Affidavit of Father Mike Kwiatkowski, Docket No. 174**

15 The TLC objected to the entire affidavit on the basis of
16 relevance and specifically to paragraphs 4-21 and Exhibits A-N.
17 The Court invited additional submissions as to paragraph 6. The
18 specific objection to paragraph 6 is lack of foundation and that
19 affiant has not been qualified as an expert. The Association of
20 Parishes responded that the affiant is not intended to be an
21 expert, but, as a parish priest, is qualified to speak to the
22 source of funds and reliance on the funds. The objection is
23 overruled as to paragraphs 1-3 and 6. There is sufficient
24 foundation for the statements made. Paragraphs 1-3 and 6 are
25 admitted for the purpose of summary judgment.

26 Paragraphs 4-5, 7-21 and Exhibits A-N have not been relied
27 upon by the Court in making its ruling on the motions for summary
28 judgment or to dismiss and the evidentiary objection to those

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1 paragraphs and exhibits is not being ruled upon.

2 **Affidavit of Frank Anselmo, Docket 143**

3 The TLC objected to the entire affidavit on the basis of
4 relevance and specifically to paragraphs 3-6. The Court invited
5 additional submissions as to paragraph 4. The specific objection
6 as to paragraph 4 is lack of foundation and legal conclusion.
7 There is sufficient foundation for the statements made. The
8 statement does not involve a legal conclusion. The objection is
9 overruled as to paragraphs 1-2 and 4. Paragraphs 1-2 and 4 are
10 admitted for the purpose of summary judgment.

11 Paragraphs 3 and 5-6 have not been relied upon by the Court in
12 making its ruling on the motions for summary judgment or to dismiss
13 and the evidentiary objection to those paragraphs is not being
14 ruled upon.

15 **Affidavit of Father Paul Vevik, Docket 144**

16 The TLC objected to the entire affidavit on the basis of
17 relevance and specifically paragraphs 4-18 and Exhibits A-G. The
18 Court invited additional argument as to paragraphs 13 and 18. The
19 specific objection to paragraph 13 is lack of foundation and legal
20 conclusion. The statement that donations were for the exclusive
21 use and benefit of the parish does not rise to the level of a legal
22 conclusion. On the other hand, the statement that the donations
23 were used in compliance with Washington law and canon law do
24 constitute a legal conclusion. The portion of the sentence reading
25 "In accordance with Canon Law and Washington Law" is struck and the
26 balance is admitted. Exhibit F is admitted.

27 The objection to paragraph 18 is lack of foundation and legal
28 conclusion. The statements do not constitute legal conclusions and

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1 there is sufficient foundation.

2 Paragraphs 1-3, 13, 18 and Exhibit F are admitted except as
3 noted above for the purpose of summary judgment. Paragraphs 4-12,
4 14-17, Exhibits A-E and G have not been relied upon by the Court in
5 making its ruling on the motions for summary judgment or to dismiss
6 and the evidentiary objection to those paragraphs and exhibits is
7 not being ruled upon.

8 **Affidavit of Father John Krier, Docket 146**

9 The TLC objected to the entire affidavit on the basis of
10 relevance and specifically to paragraphs 4-13 and Exhibits A-C.
11 The Court invited additional argument as to paragraph 9. The
12 specific objection to paragraph 9 is lack of foundation and
13 personal knowledge. There is sufficient foundation to support the
14 statement. Paragraphs 1-3 and 9 are admitted for the purpose of
15 summary judgment.

16 Paragraphs 4-8, 10-13 and Exhibits A-C have not been relied
17 upon by the Court in making its ruling on the motions for summary
18 judgment or to dismiss and the evidentiary objection to those
19 paragraphs is not being ruled upon.

20 **Affidavit of David Tareski, Docket 147**

21 The TLC objects to the entire affidavit on the basis of
22 relevance and specifically to paragraphs 5-11. The Court invited
23 additional argument as to paragraph 11. The specific objection is
24 hearsay and lack of foundation. The TLC appears to have retreated
25 from the hearsay objection since they did not further explain the
26 objection on this point. Further, the Court does not find hearsay
27 to be present. There is sufficient foundation for the statements.
28 Paragraphs 1-3 and 11 are admitted for the purpose of summary

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1 judgment.

2 Paragraphs 5-10 have not been relied upon by the Court in
3 making its ruling on the motions for summary judgment or to dismiss
4 and the evidentiary objection to those paragraphs is not being
5 ruled upon.

6 **Affidavit of Father Stephen Barnufsky, Docket 139**

7 The TLC objects to the entire affidavit on the basis of
8 relevance and specifically to paragraphs 4-7. The Court invited
9 additional arguments as to paragraphs 5 and 6. The specific
10 objection to paragraphs 5 and 6 was that it involved a lack of
11 foundation regarding a statement that Father Barnufsky was a legal
12 representative of the Franciscan Fathers. The Court concludes that
13 the affidavit and exhibit establish foundation. There is a
14 reference in the objection to a legal conclusion, but no further
15 development is provided. The TLC argues that Father Barnufsky's
16 testimony cannot establish intent and furthermore the subjective
17 intent of the transferor is irrelevant. *See, Engel v. Breske*, 37
18 Wn.App. 526, 681 P.2d 263 (1984); *Zioncheck v. Nadeau*, 196 Wn. 33,
19 81 P.2d 811 (1938). Neither case is persuasive in this instance.
20 Paragraphs 1-3, 5-6 and Exhibit A are admitted.

21 Paragraphs 4 and 7 have not been relied upon by the Court in
22 making its ruling on the motions for summary judgment or to
23 dismiss, and the evidentiary objection to those paragraphs is not
24 being ruled upon.

25 **Affidavit of George Telfer, Docket 140**

26 The TLC objects to the entire affidavit on the basis of
27 relevance and specifically to paragraphs 4-7 and Exhibit A. The
28 Court invited additional arguments as to paragraph 7. The specific

1 objection as to paragraph 7 is that it states a legal conclusion.
2 No legal conclusion is made. Paragraphs 1-3 and 7 are admitted for
3 the purpose of summary judgment.

4 Paragraphs 4-6 and Exhibit A have not been relied upon by the
5 Court in making its ruling on the motions for summary judgment or
6 to dismiss and the evidentiary objection to those paragraphs is not
7 being ruled upon.

8 Affidavit of Father Michael Blackburn, Docket 141

9 The TLC objects to the entire affidavit on the basis of
10 relevance and specifically to paragraphs 4-17 and Exhibits A-F.
11 The Court invited additional arguments as to paragraph 9. The
12 specific objection is lack of foundation and personal knowledge.
13 The Association of Parishes responds that the affiant is not
14 intended to be an expert, but, as a parish priest, is qualified to
15 speak to the source of funds and reliance on the funds. Paragraphs
16 1-3 and 9 are admitted for the purpose of summary judgment.

17 Paragraphs 4-8, 10-17 and Exhibits A-F have not been relied
18 upon by the Court in making its ruling on the motions for summary
19 judgment or to dismiss and the evidentiary objection to those
20 paragraphs is not being ruled upon.


21 CONCLUSION

22 As previously noted, the Court is only ruling on specific
23 paragraphs and exhibits in affidavits. To the extent that an
24 affidavit is not mentioned at all or there is not a specific ruling
25 as to a paragraph or exhibit, the objection is neither granted nor
26 denied as the paragraph or exhibit has not been relied upon. The
27 Court has attempted to identify each paragraph and exhibit and
28 whether it is being ruled upon or not. In the event the Court

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failed to mention an affidavit, paragraph or exhibit the foregoing
general rule should be applied.

DATED this 26th day of August, 2005.


PATRICIA C. WILLIAMS
Bankruptcy Judge